

Protecting Tenants: What you Should Know About Lead Safety

Presented by
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The District of Columbia's Lead-Hazard Prevention and Elimination Act of 2008

The new District lead law starts entering into effect in April, 2009. This important legislation completely changes the legal landscape for lead poisoning prevention in the District of Columbia and establishes the conditions for an unprecedented level of protection for District residents against lead exposure. The following summary highlights some of the new law's major components.

New Definition of "Lead-Based Paint Hazard"

The presence of a lead-based paint hazard is a violation of the law. (See Section 3) So it is important to know just what a lead-based paint hazard actually is. The new law adds an important new dimension to the traditional definition of a "lead-based paint hazard." The standard definition of a lead-based paint hazard consists of three elements: the presence of lead-contaminated dust, lead-contaminated soil, or deteriorating lead paint. The new law establishes that any paint in or on a pre-1978 residential property or "child-occupied facility" (including daycares, kindergarten classrooms, or preschools, provided they host children under the age of six on a regular basis) is now presumed to be lead-based paint. *This means that any paint in or on such a property that is not in intact condition is automatically considered to be a lead-based paint hazard.*

In addition, the new definition of a lead-based paint hazard also includes a focus on workers who disturb paint during the course of their work. Now, anytime a worker (including carpenters, plumbers, electricians and painters) works on a pre-1978 residential property or child-occupied facility, they must take care to "contain" the work area in such a way as to prevent exposure to potential lead hazards. "Containment" is defined in the law as "a system, process, or barrier used to contain lead-based paint hazards inside a work area." Specific containment requirements will be spelled out in upcoming regulations. However, the new law already lists certain "work practice standards" to which contractors and others must adhere, including the use of lead-safe work practices. (See Section 12) These too will be further detailed in upcoming regulations.

In terms of enforcement, this means that whenever a District Government inspector finds deteriorated paint in or on pre-1978 residential properties or child-occupied facilities such as daycares, *it will be treated as a lead-based paint hazard*, and a Notice of Violation will be issued, requiring elimination of the hazard. For contractors, if they disturb paint in or on a pre-1978 residential property or child-occupied facility and they fail to use lead-safe work practices while doing so, they too can be issued a Cease and Desist Order and a Notice of Violation.

Increased Ability to Inspect

With the new lead law, the District Government can now inspect whenever there is a "reasonable belief" that lead-based paint hazards may be present, in either residential dwelling units (see definition), or in accessible common areas, or in child-occupied facilities. It's important to note that the new law contains *no requirement that a child must be present* (either as a resident or as a frequent visitor) in order for a lead risk assessment to occur in residential buildings.



This new, broad authority will enable District Government inspectors to enter any pre-1978 residential property and issue a Notice of Violation to the owner if a lead-based paint hazard is found in a dwelling unit or in an accessible common area, such as a laundry room, a bicycle storage area, in stairwells and in hallways. Likewise for any child-occupied facilities.

The "reasonable belief" that is also necessary for these inspections to occur can be based on anything ranging from a complaint that there is some peeling paint in one of these pre-1978 properties, to knowledge that a particular neighborhood contains a fair amount of poorly maintained housing. This new ability for District Government inspectors to proactively search for lead hazards and require their elimination represents a major new tool in preventing exposure to lead before a child is harmed.

New Flexibility and Responsibilities in Eliminating Lead Hazards

Enforcement officials have the flexibility to allow property owners to eliminate lead-based paint hazards by a variety of techniques, and not just by requiring specific "abatement" measures that require the use of a District-certified abatement contractor. A property owner who must eliminate lead hazards may do so by using interim controls, *which does not require the use of a District-certified abatement contractor*. However, in such situations, the person doing the work must be trained in lead-safe work practices and must comply with the District's work practice standards (see Section 12).

In some situations, a combination of abatement and interim control measures may be used. In those cases, a District-certified abatement contractor will still need to be hired, at least to do the abatement activities.

In all situations, regardless of whether abatement or interim controls are used, the owner must secure the services of an independent, District-certified lead inspector or risk assessor, who must perform a clearance examination to make sure no lead-based paint hazards remain on the property. *Enforcement staff now also has the option to require periodic retesting of properties where interim controls were used instead of abatement measures*. In those instances, a clearance examination may have to be repeated at a future date, in order to demonstrate that those interim control measures continue to be effective over time.

Also in all situations, owners who are required to eliminate lead-based paint hazards must address and correct any underlying defects identified as contributing to the hazards. This will typically consist of moisture conditions that contribute to paint failure, or deteriorated substrates that must be replaced.

In addition, the new law gives enforcement officials the right to order landlords to arrange and pay for temporary relocation of tenants whose homes contain lead-based paint hazards. When this occurs, the landlord must "make all reasonable efforts to ensure that the household is relocated to a dwelling unit that is in the same school district or ward, near public transportation, as appropriate." (See Section 4(D)[2])

Groundbreaking Turnover Requirements

The new law establishes two different sets of requirements that are triggered when a change of occupancy occurs in a pre-1978 residential rental unit. These requirements will be phased in over time.

The first such requirement is a disclosure requirement and applies to owners of pre-1978 residential properties. While there is a long-standing lead disclosure requirement under Federal law, the new DC law requires an extra element. In addition to the traditional disclosure requirements pertaining to the presence of lead-based paint and/or lead-based paint hazards, affected owners must also disclose any "pending actions" ordered by the District Government pursuant to the new lead law. These disclosures must occur "before any change in occupancy or contract for possession is executed." (See Section 5[a])

The second turnover-based requirement has to do with the production of a "clearance report" (see definition). Whenever a pre-1978 residential rental property is about to be occupied by either a pregnant

woman or a child under the age of six years, in addition to the disclosure information described above, the owner must also submit a clearance report that provides documented proof that the particular rental unit in question was found not to contain any lead-based paint hazards. *This clearance report must be less than one year old.* (See Section 5[b])

A year after these requirements enter into effect, these provisions may then be extended to all residential units in buildings built before 1950, rather than limited to those where a young child or a pregnant woman lives. To make this happen, the DC Council would have to approve new law based on a proposal the Mayor offers, along with a report from the Mayor on how well implementation of the first phase went. Should this occur, then a similar scenario would have to play out for a third and final phase to be implemented, in which the turnover requirements would apply to all residential units in buildings built before 1978.

To implement this groundbreaking Section of the new lead law, the District Government will be issuing a disclosure form that property owners will use, as well as a form that describes tenants' rights under the new law. Enforcement will focus on fulfilling both the disclosure and the clearance report elements of the turnover requirements.

Important exemptions exist for property owners who are subject to these turnover requirements. First, they are exempt from having to produce a clearance report if they have documentation from a risk assessor or a lead inspector "certifying that the unit is a lead-free unit." Second, they are also exempt if they have already produced three clearance reports for a given unit, at least a year apart from each other, within the previous seven years. However, this second exemption does not apply if the property owner is or was subject to any housing code violations during the previous five years. (See Section 5(b)[A] and [B])

If you should have any questions, please contact the District Dept of the Environment, Office of Lead and Healthy Homes at 202-535-1934.

Regards,

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